

ROYAL COMMISSION

ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

EXHIBIT No.

PER..... REGISTRAR..... DATE.....

EVIDENCE GATHERED FOR THE
REPORT
of
THE ROYAL COMMISSION
APPOINTED TO INQUIRE INTO
THE FAILURE
of
ATLANTIC ACCEPTANCE CORPORATION
LIMITED

EXAMINATION FOR DISCOVERY OF MANFRED KAPP

Date of interview: October 21, 1965

Exhibit Number: 4157

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ROYAL COMMISSION

ON

ATLANTIC ACCEPTANCE CORPORATION LIMITED

EXHIBIT No. 4157

PER N.C. 2. 3. 67 DATE

REGISTRAR

IN THE MATTER OF THE BANKRUPTCY OF TRANS COMMERCIAL
ACCEPTANCE LIMITED, of the City of Toronto, in the
County of York, Province of Ontario

EXAMINATION FOR DISCOVERY OF MANFRED KAPP taken the
21st day of OCTOBER, 1965

PETER W. MCHUGH
SPECIAL EXAMINER
Chartered Shorthand Reporter
TORONTO - 364-4068

ONTARIO

In The SUPREME Court of ONTARIO

IN THE MATTER OF THE BANKRUTCY OF
TRANS COMMERCIAL ACCEPTANCE LIMITED,
of the City of Toronto, in the County
of York, Province of Ontario

v.

EXAMINATION OF
MANFRED KAPP

FOR DISCOVERY
 ON AFFIDAVIT
 AS JUDGMENT DEBTOR
 DE BENE ESSE

TAKEN OCTOBER 21 19 65

The Royal Commission on Atlantic Accep.

JP:sp

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IN THE SUPREME COURT OF ONTARIO

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IN THE MATTER OF THE BANKRUPTCY OF TRANS
COMMERCIAL ACCEPTANCE LIMITED, of the City
of Toronto, in the County of York, Province
of Ontario.

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This is the examination of MANFRED KAPP,

under Section 121 of the Bankruptcy Act, taken in short-hand before Peter W. McHugh, C.S.R., Special Examiner, at his Chambers Suite 802 the Victory Building, 80 Richmond Street West, Toronto, Ontario, on the 21st day of October, 1965.

APPEARANCES:

D.E. BAIRD, ESQ., for the Trustee,

J. POMERANT, ESQ., for the Witness.

- - -

1

2

3

MANFRED KAPP, sworn.

4

5 BY MR. BAIRD:

6

1 Q. What is your full name, Mr. Kapp?

7

A. Manfred Kapp.

8

2 Q. Where do you live?

9

MR. POMERANT: Just a moment, Mr.

10

Kapp. Mr. Kapp, pursuant to Section 5 of the
11 Canada Evidence Act, Section 9 of the Ontario
12 Evidence Act objects to answer this question on
13 the ground his answer may tend to criminate him
14 or may tend to establish his liability to a
15 Civil Proceeding at the instance of the Crown
16 or of any person, or to a prosecution under any
17 Act of the Provincial Legislature.

18

Mr. Kapp, therefore claims the
19 protection of Section 5 of the Canada Evidence
20 Act, Section 9 of the Ontario Evidence Act, and
21 any other Provincial Act applicable. S

22

So as not to interfere with the examination
23 of Mr. Kapp, and because all the questions
24 in this examination will require answers by Mr.
25 Kapp that may criminate him, or may tend to
26 establish his liability to a Civil Proceeding
27 at the instance of the Crown or any person,
28 or to a prosecution under any Act of the

29

30

1 Provincial Legislature, may it be accepted and
2 admitted that Mr. Kapp objects and is deemed to
3 have objected to answer every question on this
4 examination on the ground that his answers may
5 tend to criminate him or may tend to establish
6 his liability to a Civil Proceeding at the
7 instance of the Crown or any person, or to
8 prosecution under any Act of the Provincial
9 Legislature, and Mr. Kapp has and is deemed to
10 have claimed the protection of Section 5 of the
11 Canada Evidence Act, Section 9 of the Ontario
12 Evidence Act for every answer given to every
13 question asked at this examination.

14 Do you so admit all the foregoing to
15 be and to have been done?

16 MR. BAIRD: Yes.

17

18 BY MR. BAIRD:

19 3 Q. The question was, where do you live?

20 A. 77 Stonedene Boulevard, Willowdale.

21 4 Q. What was your position with Trans
22 Commercial Acceptance Limited?

23 A. The date of inception I was Secretary-
24 Treasurer till a later date when I became
25 President.

26 5 Q. We will refer to Trans Commercial
27 Acceptance Limited as Trans Commercial. Accord-
28 ing to the minute book, Mr. Kapp, you became
29 Secretary-Treasurer as of December 16th, 1963.
30

1 Would that be correct?

2 A. It is possible.

3 6 Q. We have the minute book available for
4 your perusal. The minute book also records you
5 became President of the company on September
6 14th, 1964?

7 A. Yes, those are my positions.

8 7 Q. When did you resign as an officer
9 of the company?

10 A. Can I look at the book?

11 || 8 Q. Yes?

12 A. July 1965. I believe it was the
13 9th day of July.

14 9 Q. July 9th, 1965. Why was Trans
15 Commercial Acceptance Limited incorporated?

16 A. Trans Commercial was incorporated to---

17

18 MR. POMERANT: Excuse me. May I

19 interject and say this. Could you perhaps be

20 a little more specific in pointing out to Mr.

21 Kapp -- in other words, the question as it was

22 put, leaves Mr. Kapp in a rather difficult

23 position because I don't think he can give

24 you the reason as to why it was incorporated.

25 From a certain point of view, he can only tell

26 you what he thinks and guess why it was

 incorporated.

27 MR. BAIRD: As a director of the
28 company, he should be able to tell me why he
29 thinks it was incorporated.

1 MR. POMERANT: In the light of what
2 will be said, it will become apparent.

3 MR. BAIRD: Please allow Mr. Kapp to
4 answer my question and we will carry on from
5 there.

6 MR. POMERANT: I will allow Mr. Kapp
7 to answer the question so long as it is under-
8 stood that what he is giving you is his own
9 belief as to why the company was incorporated
10 and his guess at why it was incorporated.

11 THE DEPONENT: To my understanding,
12 Trans Commercial was incorporated for the
13 purpose of transferring certain loans from
14 Commodore Sales Acceptance to a new corporation.

16 BY MR. BAIRD:

17 10 Q. What was the reason for the transfer
18 of the loans?

19 A. I don't know exactly the reason, again,
20 the reason---

21 11 Q. Who arranged for the company to be
22 incorporated?

23 A. It was arranged under the direction
24 of Mr. Morgan.

25 12 Q. You are referring to Mr. C. Powell
26 Morgan?

27 A. C.P. Morgan. C. Powell.

28 13 Q. If he arranged for the incorporation
29 of the company, why wasn't he an officer or

30

1 Director of the company?

2 A. I don't know.

3 14 Q. Why did you agree to be an officer or
4 director of the company?

5 A. I was asked to become an officer I
6 know.

7 15 Q. Who asked you to become an officer of
8 the company?

9 A. Mr. Morgan and Mr. Tramiel and I don't
10 know. I don't recall off hand.

11 16 Q. Who controlled the majority of shares
12 of Trans Commercial Acceptance Limited?

13 A. Well, as far as I know it was only
14 a nominal amount of shares issued and they
15 were under the control of Commodore Sales.

16 17 Q. Mr. Kapp, the minute book indicates
17 that originally there were three common shares
18 issued, one held by Jack Tramiel, one held
19 by Manfred Kapp, and one held by Frederick
20 Draper. Subsequently, Associated Canadian
21 Holdings Limited subscribed 14,997 common
22 shares of Trans Commercial Acceptance. The
23 subscription date is September 10th, 1964, and
24 it appears to have been signed by Jack Tramiel
25 and Manfred Kapp on behalf of Associated
26 Canadian Holdings. Why was this done?

27 A. I don't know.

28 18 Q. I produce to you a statement included
29 in the minute books of Trans Commercial

30

1 Acceptance Limited which provides that
2 Associated Canadian Holdings subscribed for
3 10,000 preference shares of par value of
4 \$10.00 each of the capital stock of Trans
5 Commercial Acceptance Limited and for
6 14,997 common shares without par value in
7 the capital stock of the company for a
8 purchase price of \$14,997.00 and tendered
9 \$14,997.00 in full payment therefor. Did
10 you sign that subscription?

11 A. Yes, I did.

12 Q. Why did Associated Canadian Holdings
13 subscribe for the stock of Trans Commercial?

14 A. I guess you would have to ask the
15 people who were taking care of Associated
16 Canadian Holdings.

17 Q. Who were they?

18 A. Mr. Morgan was running Associated

19 Q. Was Mr. Morgan an officer or director
20 of Associated Canadian Holdings Limited?

21 A. Not to my knowledge.

22 Q. Why was he running the company?

23 A. He was running it.

24 Q. Why?

25 A. He was directing it.

26 Q. Why?

27 MR. POMERANT: I think you should tell
28 him the whole story again, Mr. Kapp.

29

1 BY MR. BAIRD:

2 25 Q. We are quite happy to hear the whole
3 story?

4 A. In essence, Mr. Morgan felt and acted
5 as he owned Associated Canadian Holdings and
6 would give the directions on what was to be
7 done.

8 26 Q. Did you sign the subscription on the
9 instructions of Mr. Morgan?

10 A. Probably.

11 27 Q. Are you not sure?

12 A. Well, I have signed many documents and
13 sometimes it was done because I was an officer
14 of the company and just followed through the
15 direction of the action that had been taken.

16 28 Q. Who had taken the action, or made the
17 direction?

18 A. I told you I assume Mr. Morgan,
19 through Associated.

20 29 Q. Is there anyone else who gave
21 instructions or directions on behalf of
22 Associated Canadian Holdings Limited to you?

23 A. Sometimes Mr. Wagman might have given
24 them but they would have come from Mr. Morgan.

25 30 Q. Did Mr. Wagman have instructions to
26 give authority on his own, to you?

27 A. Not that I know of, no.

28 31 Q. Who was the officer of Trans Commercial
29 Acceptance Limited?

30

1 A. I think it was Wagman, Fruitman and
2 Lando.

3 Q. Was Mr. Wagman involved in the original
4 negotiations to set up this company?

5 A. It is possible.

6 Q. Do you know?

7 A. I don't remember even the details.

8 Q. What is your position with Commodore
9 Business Machines (Canada) Limited?

10 A. Vice-President and Secretary-Treasurer.

11 Q. What is your position with Canada Dry
12 Copy Limited?

13 A. President.

14 Q. Your position with Canada Dry Copy Inc.?

15 A. Secretary-Treasurer.

16 Q. What was your position with Evermac
17 Office Equipment Company Limited?

18 A. Secretary-Treasurer.

19 Q. What was your position with Humber
20 Typewriters and Business Equipment Limited?

21 A. President.

22 Q. I am not sure whether I asked you
23 before but what was your position with
24 Associated Canadian Holdings Limited?

25 A. Secretary I think.

26 Q. Were you an officer of Racan Photo Copy
27 Corporation Limited?

28 A. No.

29 Q. Were you an officer of Jay Man

30

1 Distributors Inc.?

2 A. Yes.

3 42 Q. What is your position?

4 A. Secretary.

5 43 Q. Are you an officer of Baronet

6 Associates Inc.?

7 A. I think so.

8 44 Q. Are you an officer of Five Wheels

9 Limited?

10 A. No.

11 45 Q. Were you ever an officer of Five Wheels

12 Limited?

13 A. Never.

14 46 Q. Were you, or are you now an officer

15 or director of L.B.H. Management Limited?

16 A. No, never been to my knowledge.

17 47 Q. Were you an officer or director of

18 the Hugo Oppenheim Und Sohn Nachf. Berliner

19 Privatbank A.G.?

20 A. I think for a very short time I was

21 a director of the company.

22 48 Q. Were you an officer or director of

23 Hugo Oppenheimbank (Canada) Limited?

24 A. No.

25 49 Q. I would like to show you statement of

26 account between Trans Commercial Acceptance

27 Limited and Commodore Business Machines

28 (Canada) Limited. This statement shows a

29

30

1 balance owing by Commodore Business Machines
2 (Canada) Limited to Trans Commercial Acceptance
3 Limited of \$19,445.81. This will be entered
4 as Exhibit Number 1.

6 ---EXHIBIT NO. 1: Statement of account between Trans
7 Commercial Acceptance Limited and
Commodore Business Machines (Canada)
Limited.

BY MR. BAIRD:

A. No, it is not correct.

51 Q. What is the correct balance owing?

11
12 MR. POMERANT: I wonder, Mr. Baird,
13
14 if you could point out on what basis the
15 statement was made, who made the statement,
16
17 and from what books the statement is derived

19 MR. BAIRD: Prepared by the Trustee
from the books of account of Trans Commercial
20 Acceptance Limited.

MR. POMERANTZ: I see.

23 THE DEPONENT: The question asked, I
believe, was what was the correct balance.

The correct balance is \$13,885.55.

BY MR. BAIRD:

52 Q. How did you arrive at this figure?

A. Missing from the statement is a

1 payment by Commodore on June 25th, cheque
2 number 5181 for \$3,000.00.

3 53 Q. You have stated that Commodore paid
4 Trans Commercial Acceptance Limited \$3,000.00
5 on June 25th, 1965?

6 A. Correct.

7 54 Q. Was this cheque issued to Trans
8 Commercial Acceptance directly?

9 A. Yes.

10 55 Q. Was the cheque deposited in the bank
11 account of Trans Commercial Acceptance Limited?

12 A. Yes sir.

13 56 Q. Even taking into account the cheque
14 of \$3,000.00, the figure is not -- a deduction
15 of \$3,000.00 from the statement does not leave
16 a balance of \$13,885.55?

17 A. There is also an item of interest due
18 to Commodore of \$2,560.26.

19 57 Q. How is that interest determined and
20 why is it payable?

21 A. This is determined through charges
22 made by Commodore to Trans Commercial in May,
23 April and June for moneys on deposit with
24 Trans Commercial less interest charged by
25 Trans Commercial in June.

26 58 Q. Please show me how you calculate this
27 amount?

28 A. Yes sir. In April, there was an amount
29 of \$1,903.31 calculated on the basis of

30

1 \$8,173,034.00 at eight and a half per cent.

2 59 Q. Eight million dollars?

3 A. Let me tell you. This is calculated
4 on a daily basis.

5 60 Q. For the purpose of the transcript,
6 let's explain this calculation?

7 A. I stated \$8,173,034.00 at eight and
8 aahalf per cent calculated on a daily basis for
9 30 days.

10 61 Q. Have you produced a statement showing
11 the amount on deposit with Trans Commercial by
12 Commodore for each day in April?

13 A. Yes, I can produce that statement.

14 62 Q. I would like to see that.

15 MR. POMERANT: It would be reflected in the
16 books.

17 MR. BAIRD: I am asking whether he has
18 a statement of this amount. If he has, I
19 would like to see it.

20

21 BY MR. BAIRD:

22 63 Q. The witness has produced to me three
23 photostatic copies of calculations of the loan
24 account of Commodore Business Machines with
25 Trans Commercial Acceptance. I would enter
26 that as Exhibit 2.

27

28 ---EXHIBIT NO. 2: Three photocopies of calculations of
29 loan account of Commodore Business
Machines with Trans Commercial.

30

1 BY MR. BAIRD:

2 64 Q. Is there an agreement providing interest
3 will be paid at the rate of eight and a half
4 per cent per annum?

5 A. This is how it was directed it should
6 be done.

7 65 Q. Who directed it should be done in this
8 manner?

9 A. The direction came from Commodore
10 Sales.

11 66 Q. Who gave this direction on behalf of
12 Commodore Sales?

13 A. It is possible we got the instruction
14 from Mr. Wolfrey from Mr. Morgan.

15 67 Q. Did Trans Commercial ever agree in
16 writing to pay eight and a half per cent on the
17 loan account of Commodore Business Machines?

18 A. I can't answer you if there is a written
19 document.

20 68 Q. Do you know whether there is a written
21 document?

22 A. I don't know if there is.

23 69 Q. The statement which you have prepared
24 shows an interest charge for the month of April
25 to be \$1,903.31. What amount was charged for
26 interest for the month of May, 1965?

27 A. The figure is \$837.51.

28 70 Q. How was this calculated?

29 A. The same basis as April.

30

1 71 Q. What was the total upon which it was
2 calculated?

3 A. The total it was calculated on
4 \$3,596,372.00 also calculated on a daily basis
5 for 31 days.

6 72 Q. What was the amount of interest charged
7 for the month of June, 1965?

8 A. It was \$126.71, calculated on \$539,032.00
9 for eleven days on a daily basis.

10 73 Q. It appears from the account of Trans
11 Commercial Acceptance, the accounts page of
12 Commodore Business Machines (Canada) Limited that
13 on June 11th, 1965, Commodore Business Machines
14 (Canada) Limited assumed the liability of
15 Pearlsound Distributors Limited to Trans
16 Commercial Acceptance in the amount of \$117,976.33.
17 Is that correct, Mr. Kapp?

18 A. Commodore Business Machines assumed the
19 debt of Pearlsound but the figures I don't know
20 exactly but I presume the figures on the books
21 from which you are reading are correct.

22 74 Q. Did it assume that debt on June 11th,
23 1965?

24 A. I don't remember the date.

25 75 Q. Was there any interest payable by
26 Pearlsound by Trans Commercial in respect of
27 money owing by it?

28 A. When Commodore Business Machines took
29 over the account in full, it would include

1 interest, or the interest had been paid by
2 Pearlsound. Pearlsound does not owe any money
3 to Trans Commercial.

4 76 Q. Was interest payable by Pearlsound
5 to Trans Commercial Acceptance Limited?

6 A. Up to the date Pearlsound borrowed
7 money from Trans Commercial. Thereafter,
8 Commodore took over the obligation.

9 77 Q. Was interest payable on this obligation?

10 A. Yes.

11 78 Q. What was the rate of interest?

12 A. 12%, whatever rate was charged. I
13 think it was 12%.

14 79 Q. Have you calculated the interest owing
15 by Commodore Business Machines (Canada) Limited
16 to Trans Commercial for the month of June, 1965?

17 A. Yes.

18 80 Q. Can you tell me the amount of that
19 interest?

20 A. Yes, the amount of interest due by
21 Commodore to Trans Commercial for June was
22 \$307.27 calculated on the basis of \$934,626.00
23 at 12% on a daily basis for 19 days.

24 81 Q. In your calculations, have you
25 calculated interest owing by Commodore Business
26 Machines to Trans Commercial from June 30th,
27 1965 to the present time?

28 A. No, there was no further interest to
29 my knowledge calculated since June 30th.

30

1 82 Q. From my understanding of the transaction,
2 Commodore Business Machines (Canada) Limited
3 would then owe interest to Trans Commercial on
4 the balance, on the principal balance outstanding
5 from June 30th, 1965 to the present time.

6 Would that be correct?

7 A. That would be correct.

8 83 Q. Have you calculated this interest?

9 A. No, I have not.

10 84 Q. I am also advised interest has not
11 been included -- interest for that period -- has
12 not been included in Exhibit Number 1.

13

14 ---Off the record discussion.

15

16 MR. BAIRD: I would like a photostatic
17 copy of this.

18 MR. POMERANT: I have no objection.

19 MR. BAIRD: For the purposes of the
20 record, Mr. Kapp has agreed to allow me to
21 keep Exhibit Number 2.

22

23 ---Off the record discussion.

24

25 BY MR. BAIRD:

26 85 Q. What were the terms of repayment of
27 the loans or the indebtedness of Commodore Business
28 Machines to Trans Commercial Acceptance?

29 A. There were no terms of repayment.

30

1 Those were loans between, from Trans Commercial
2 to Commodore and when Commodore borrowed and
3 repaid -- they were revolving loans.

4 86 Q. What was the basis for the repayment?
5 Please answer that question. What was the
6 basis for repayment?

7 A. I believe I answered this was a
8 revolving loan borrowed and repaid.

9 87 Q. On behalf of Commodore, what was the basis
10 for repaying the loan to Trans Commercial?

11 A. Well, I don't follow your question.
12 Basis of payment was repaid whenever we could.

13 88 Q. This is what I want to establish. Did
14 you repay the loan whenever Commodore had
15 enough money to repay the loan?

16 A. Commodore paid and Commodore borrowed.

17 89 Q. Then it was that Commodore borrowed
18 and when Commodore had excess money, it repaid?
19 Is that correct?

20 A. Yes.

21 90 Q. Were there any specific terms of
22 repayment of any of the loans?

23 A. No.

24 MR. POMERANT: Were there any implied
25 terms?

27 BY MR. BAIRD:

28 91 Q. Were there any implied terms? That
29 is a fair question, I am satisfied to adopt

1 it?

2 A. The only terms were to repay as
3 necessity of business would allow.

4 92 Q. Who made the arrangement with Commodore
5 Business Machines on behalf of Trans Commercial?

6 MR. POMERANT: Who authorized the
7 arrangement?

8
9 BY MR. BAIRD:

10 93 Q. Who made the arrangement on behalf of
11 Trans Commercial?

12 MR. POMERANT: In other words, who
13 spoke the words?

14 MR. BAIRD: Yes.

15

16 BY MR. BAIRD:

17 94 Q. You said there was an arrangement that
18 money could be repaid when it was available.

19 With whom did you make this arrangement? First,
20 did you act in this arrangement on behalf of
21 Commodore Business Machines, or did you act on
22 behalf of Trans Commercial, or did you act for
23 both?

24 A. I acted principally for Commodore
25 Business Machines and the transactions were
26 controlled by Commodore Sales who periodically
27 had a man come in and check over and see when
28 we reported to them to let them know continuously
29 and when Trans Commercial received the money,

30

1 the money went back to Commodore Sales.

2 95 Q. Who directed it on behalf of Commodore

3 Sales?

4 A. The day by day operation on behalf of

5 Commodore Sales were handled by Mr. Wolfrey.

6 96 Q. Who handled the general management of

7 Commodore Sales and made the decisions concerning

8 the loans to Commodore Business Machines?

9 A. Mr. Morgan.

10 97 Q. Throughout, you are referring to

11 Mr. C. Powell Morgan when you refer to Mr. Morgan.

12 Is that correct?

13 A. Yes.

14 98 Q. Mr. Kapp, I have just ascertained that

15 the bank disbursement ledger of Trans Commercial

16 shows a payment of \$500.00 to Commodore Business

17 Machines (Canada) Limited on July 5th, 1965.

18 Did you take this into account in calculating

19 your statement which showed a balance of

20 \$13,885.55?

21 A. I don't know anything about the \$500.00.

22 I couldn't answer you if it is done in there or

23 not.

24 99 Q. I would like to produce to you a

25 certified cheque dated July 5th, 1965 which

26 appears to have been issued by Trans Commercial

27 Acceptance Limited to Commodore Business Machines

28 (Canada) Limited in the amount of \$500.00. Was

29 this cheque received by Commodore Business

30

1 Machines (Canada) Limited?

2 A. It appears to have been received and
3 deposited by Commodore. I would be more than
4 happy to call the office if you wish to find
5 out what it is.

6 100 Q. I would like you to undertake to advise
7 me as to the reason for this payment and whether
8 it should increase the balance owing to Trans
9 Commercial Acceptance Limited by Commodore
10 Business Machines by at least \$500.00.

11 MR. POMERANT: And no more.

12 MR. BAIRD: Plus interest. It would
13 increase the interest.

14 101 Q. Was there any agreement which provided
15 for payment of 12% interest by Commodore Business
16 Machines or Pearlsound Distributors on loans
17 made into either of those companies by Trans
18 Commercial Acceptance?

19 A. Again, you refer to written agreements,
20 I presume?

21 102 Q. Yes.

22 A. I don't think there are any written
23 agreements. There might have been some financing
24 contracts between the companies but they would
25 then be in Mr. Gardner's hand.

26 103 Q. You stated you are not sure whether
27 there is anything in writing providing for
28 payment of 12% interest on loans by Trans
29 Commercial to Pearlsound Distributors Limited

1 or Commodore Business Machines. Is that correct?

2 A. Correct. I did state too there might
3 have been financing agreements. If there were,
4 they would be with the file of the company in the
5 hands of Clarkson Company.

6 104 Q. If there is no agreement in writing,
7 covering payment of interest, how was the
8 agreement made concerning payment of interest?

9 A. As I explained earlier, it was made
10 at the direction of Mr. Morgan when the company
11 was originally started, that is at least Trans
12 Commercial and the loan transferred over from
13 Commodore Sales.

14 105 Q. Prior to the incorporation of Trans
15 Commercial, Commodore Sales Acceptance was
16 loaning the money directly to Commodore Business
17 Machines. Is that correct?

18 A. Correct.

19 106 Q. Why did Commodore Business Machines
20 assume the debt of \$117,976.33 which was formerly
21 owing by Pearlsound Distributors Limited to
22 Trans Commercial?

23 A. Because at that time Pearlsound was a
24 fully owned subsidiary of Commodore Business
25 Machines.

26 107 Q. On June 22nd, 1965 there is a journal
27 entry in the books of Trans Commercial whereby
28 the balance owing to Trans Commercial by
29 Commodore Business Machines was reduced by

30

1 \$34,295.28 which is described as being payment
2 by Commodore Business Machines to Baronet. Would
3 you please explain this transaction?

4 A. This was an amount which was due to
5 Commodore by Baronet and Baronet simply was
6 directed to pay it over to Trans Commercial on
7 behalf of Commodore. The amount is \$31,572.18
8 according to those books here.

9 108 Q. You state Baronet owed Commodore
10 Business Machines \$34,295.38. Is that correct?

11 A. Yes.

12 109 Q. Commodore directed Baronet to pay
13 this money to Trans Commercial?

14 A. To Trans Commercial.

15 110 Q. How was this direction given?

16 A. Probably possibly in writing.

17 111 Q. Who gave the direction?

18 A. I don't know. I would have to look,
19 probably Commodore must have given the direction
20 to Baronet.

21 112 Q. Did you give the direction on behalf
22 of Commodore?

23 A. It is possible.

24 113 Q. Would you undertake to advise me as
25 to how Commodore gave the direction?

26 A. It would be difficult to do this as
27 the records are all in the hands of the Clarkson
28 Company.

29 114 Q. Did Baronet pay Trans Commercial this
30

1 amount?

2 A. It must have paid because the proper
3 entries were made in Commodore's books.

4 115 Q. Did Baronet in fact pay the money?

5 A. As far as I know it was paid.

6 116 Q. I am advised this money was not paid
7 by Baronet to Trans Commercial?

8 A. I don't know.

9 117 Q. Who made the entries which you have
10 referred to in the books covering this trans-
11 action?

12 A. Mr. Draper would have made those
13 entries.

14 118 Q. Did Trans Commercial agree they would
15 accept payment of \$34,295.28 from Baronet
16 Associates Inc. in respect of payment of this
17 amount from Commodore Business Machines (Canada)
18 Limited?

19 A. I must assume they did.

20 119 Q. Who made this decision on behalf of
21 Trans Commercial?

22 A. I don't know off hand.

23 120 Q. Were you involved in the transaction?

24 A. It is possible.

25 121 Q. Did you decide on behalf of Trans
26 Commercial that that decision would be made?

27 A. I wouldn't have decided. If I was
28 part of it, I would have had authorization to
29 do this.

1 122 Q. Who would have given you this authoriza-
2 tion?

3 A. I would have received it from Mr.
4 Wolfrey who would have from Mr. Morgan.

5 123 Q. Did Mr. Wolfrey actually authorize
6 this transaction to take place?

7 A. I don't recall.

8 124 Q. Did Mr. Morgan authorize this trans-
9 action?

10 A. I must assume he did if any transaction
11 took place was authorized.

12 125 Q. You say this transaction was authorized
13 by Mr. Morgan.

14 MR. POMERANT: That is not what he
15 said.

16

17 BY MR. BAIRD:

18 126 Q. Was this transaction authorized by
19 Mr. Morgan?

20 MR. POMERANT: He answered that.

21 MR. BAIRD: No, he hasn't.

22 He said he must assume any transaction must
23 have been authorized by Mr. Morgan. This was
24 his answer.

25

26 BY MR. BAIRD:

27 127 Q. My question is do you know in fact if
28 Mr. Morgan authorized this transaction?

29 A. I don't recall this particular

30

1 transaction other than seeing it in the books.

2 128 Q. This transaction took place after Mr.
3 Morgan lost control of Commodore Sales Acceptance
4 Limited and there was a Receiver appointed. Are
5 you aware of that?

6 MR. POMERANT: That is one of the
7 transactions that he said he does not have
8 recollection of apart from what he has seen in
9 the books.

10 MR. BAIRD: But he is still acting---
11 he still made the direction on behalf of Trans
12 Commercial or on behalf of Commodore Business
13 Machines?

14 THE DEPONENT: I would state here that
15 even if there was a Receiver appointed, if there
16 was at the time, I do know that directions were
17 still given by Mr. Morgan in connection with
18 transactions even after this happened.

19
20 BY MR. BAIRD:

21 129 Q. Did Mr. Morgan give directions concerning
22 transactions of Trans Commercial?

23 A. I don't know specifically.

24 MR. POMERANT: You would be better---

25 MR. BAIRD: I don't know what directions
26 Mr. Morgan gave.

27 MR. POMERANT: Let me point this out
28 to you, Mr. Baird. Subsequent to Receivership,
29 a lot of other companies connected with this

1 but Mr. Morgan managed the company. We have
2 co-operated with the Clarkson Company and many
3 times would call Mr. Tramiel or Mr. Kapp and
4 ask them to do different things and it was
5 presumed he was doing it with the concurrence
6 of the Clarkson Company.

7 MR. BAIRD: This is fine for you to
8 say this. I would like Mr. Kapp to say exactly
9 what happened. He is the one who is being
10 examined here and if this is the case, he can
11 tell me.

12 THE DEPONENT: This is what I have
13 stated to you. I don't specifically remember
14 this transaction other than looking through the
15 books here and I have to assume that it was
16 authorized.

17

18 BY MR. BAIRD:

19 130 Q. Did you authorize it on behalf of
20 Trans Commercial?

21 A. I wouldn't have authorized it, no.

22 131 Q. Do you know if Mr. Tramiel authorized
23 this transaction?

24 A. I don't know.

25 132 Q. Did Mr. Draper have authority to
26 authorized the transaction?

27 A. No.

28 133 Q. Mr. Kapp, the records indicate from
29 December 29th, 1964 Commodore Business Machines

30

1 paid off the balance owing by it to Trans
2 Commercial of \$478,000.00 and in turn loaned
3 Trans Commercial \$326,321.77. Why was this
4 done?

5 A. Commodore used the proceeds of the
6 debenture and preferred shares and repaid the
7 loan due, that they owed. The money was left
8 on deposit with the company then.

9 134 Q. On or about the same date, Trans
10 Commercial borrowed \$1,500,000.00 from British
11 Mortgage and Trust Company. Is that correct?

12 A. It possibly is.

13 135 Q. Why would Trans Commercial on or about
14 the same date, repay its loan to Commodore
15 Business Machines and borrow money from British
16 Mortgage and Trust Company?

17 A. Would you rephrase that? Could you
18 read this question to me, please.

19 136 Q. On or about December 29th, 1964 Trans
20 Commercial borrowed \$1,500,000.00 from British
21 Mortgage and Trust Company and it also borrowed
22 money from Commodore Business Machines of
23 \$326,321.77. Why was this done?

24 A. This was a transaction that was
25 arranged by Mr. Morgan, borrowed on behalf of
26 Trans Commercial, borrowed from British Mortgage.
27 That money has arranged and purchased notes and
28 preferred shares. I think this is what it was.

29 137 Q. I am advised that Trans Commercial
30

1 purchased from the Hugo Oppenheimbank, Berlin,
2 which I will refer to as the Berlin Bank,
3 \$1,000,000.00 worth of preferred shares of
4 Commodore Business Machines, and \$1,000,000.00
5 worth of Promissory Notes of Commodore Business
6 Machines, and \$650,000.00 worth of common
7 shares of Commodore Business Machines. Is that
8 correct?

9 A. It is possible.

10 138 Q. I am advised that the German Bank
11 purchased preferred shares of Commodore Business
12 Machines and the Promissory Notes of Commodore
13 Business Machines from the Treasury of Commodore
14 Business Machines. Is that correct?

15 A. That is correct, yes.

16 139 Q. I am advised that the total purchase
17 price was \$1,900,000.00. Is that correct?

18 A. No, \$1,925,000.00.

19 140 Q. This was bought at a discount, those
20 preferred shares and notes, were purchased at
21 a discount of \$75,000.00. Is that correct?

22 A. That is correct.

23 141 Q. Why didn't Trans Commercial purchase
24 those preferred shares and Promissory Notes
25 from Commodore Business Machines directly?

26 A. I don't know.

27 142 Q. You were President of Trans Commercial
28 at this time.

29 MR. POMERANT: Again, I think, in light

30

1 of how that question was put, I wish Mr. Kapp
2 again to give the explanation which he has given
3 on previous occasions including the explanation
4 he gave in this examination and I think you
5 should be aware each time that question was
6 asked the same answer will be given.

7 MR. BAIRD: I expect Mr. Kapp to
8 answer the question as broadly as possible.
9

10 BY MR. BAIRD:

11 143 Q. What is your answer, Mr. Kapp?

12 A. I told you I did not make any of
13 those arrangements nor did I question them.

14 144 Q. Who made those arrangements?

15 A. Those arrangements, as far as I know,
16 were basically arranged by Mr. Morgan.

17 145 Q. What do you mean as far as you know?

18 Why did you qualify that? Have you any
19 doubts they were arranged by someone else
20 other than Mr. Morgan?

21 A. I think I told you I was not part
22 of the decision.

23 146 Q. But you signed the documents on behalf
24 of Trans Commercial. Is that correct?

25 A. Yes.

26 147 Q. Who gave you instructions to sign
27 those documents?

28 A. I think Mr. Tramiel asked me to at
29 this stage to be prepared.

30

1 148 Q. You are advising me then Mr. Tramiel
2 then arranged the transaction as far as you are
3 concerned?

4 MR. POMERANT: He never said any
5 such thing.

6

7 BY MR. BAIRD:

8 149 Q. Who did arrange the transaction and
9 ask you to sign it?

10 A. I think I told you as far as I know
11 the transaction was arranged by Mr. Morgan.

12 150 Q. But you did not get your instructions
13 directly from Mr. Morgan.

14 MR. POMERANT: Which instructions?

15 MR. BAIRD: Instructions to carry out
16 this transaction. He signed the documents
17 effecting the transaction.

18 MR. POMERANT: In other words, your
19 question is were there any instructions given to
20 him by Mr. Morgan, or---

21

22 BY MR. BAIRD:

23 151 Q. Were any instructions concerning the
24 transaction I have outlined to you given to you
25 by Mr. Morgan?

26 A. Will you repeat the question for me,
27 please?

28 152 Q. Were any instructions given to you
29 concerning this transaction given to you by Mr.

30

1 Morgan?

2 A. I do not remember saying Mr. Morgan
3 gave me the instructions. You asked the
4 question who gave instruction to sign the
5 documents and I said I presume Mr. Tramiel gave
6 it to me.

7 153 Q. What rights did Mr. Tramiel have to
8 give you instructions when at this time he
9 was not an officer of Trans Commercial.

10 MR. POMERANT: I think that is a
11 question of law.

12 MR. BAIRD: Why did he accept instruc-
13 tions from Mr. Tramiel?

14 MR. POMERANT: I think that is an
15 entirely different question.

16

17 BY MR. BAIRD:

18 154 Q. Why did you accept those instructions
19 from Mr. Tramiel?

20 A. Because, as far as I know, they came
21 down from Mr. Morgan.

22 155 Q. Did Mr. Tramiel tell you he was advised
23 to do this by Mr. Morgan?

24 A. I would assume he would have told me
25 Mr. Morgan had arranged this, yes.

26 156 Q. Do you know any reason why the
27 transaction was placed through the German Bank
28 rather than directly with Trans Commercial
29 Acceptance?

30

1 A. I don't know why it was decided to go
2 through the German Bank.

3 157 Q. It appears that the majority of the
4 money was raised through a loan from British
5 Mortgage and Trust Company. Why didn't British
6 Mortgage and Trust Company buy the shares or
7 loan the money directly to Commodore Business
8 Machines?

9 A. Again, I am not in a position to
10 answer for British Mortgage.

11 158 Q. Did you have any negotiations with
12 anyone in British Mortgage?

13 A. Not myself, no.

14 159 Q. Did you have any correspondence with
15 British Mortgage and Trust Company?

16 A. It is possible that there might have
17 been.

18 160 Q. Mr. Kapp, I would like first to show
19 you a collateral security agreement dated
20 April 29th, 1964 in favour of the British Mortgage
21 and Trust Company which appears to have been signed
22 by you as President and by Mr. Draper as
23 Secretary for Trans Commercial Acceptance
24 Limited. I would enter this as Exhibit 3.

25
26 ---EXHIBIT NO. 3: Collateral Security Agreement dated
27 April 29th 1964 in favour of the
British Mortgage and Trust.
28
29
30

1 BY MR. BAIRD:

2 161 Q. Did you sign this pledging agreement?

3 A. It appears to be my signature.

4 162 Q. Who acted on behalf of Trans Commercial
5 Acceptance in arranging this transaction?

6 MR. POMERANT: Again---

7 MR. BAIRD: Please allow your client
8 to answer. I think that is a very straight-
9 forward and simple question.

10 THE DEPONENT: As far as I know, it
11 was arranged by Mr. Morgan.

12

13 BY MR. BAIRD:

14 163 Q. Who handled the mechanics of the
15 transaction?

16 MR. POMERANT: Again, Mr. Baird---

17 MR. BAIRD: Let him answer.

18 MR. POMERANT: I want him to answer
19 the question. As you can appreciate, in the
20 course of any transaction of this sort, you
21 are going to have approximately 30 people
22 involved, some people who signed, some people
23 who are delivering. I want him to answer the
24 question fairly. At the same time I don't want
25 to be put in the position where it is suggested
26 it was not answered properly because he did not
27 understand the complexity.

28 MR. BAIRD: I am asking now who delivered
29 the document to British Mortgage and Trust Company?

30

1 THE DEPONENT: As far as I can recall,
2 documents were delivered through the mail, or
3 through Solomon & Singer.

4

5 BY MR. BAIRD:

6 164 Q. Did Solomon & Singer act on behalf
7 of Trans Commercial Acceptance in this transaction?

8 A. I think they acted for both. I am not
9 quite sure. British Mortgage and---

10 165 Q. Did they act for both British Mortgage
11 and Trans Commercial Acceptance?

12 A. I think so. I am not sure.

13 166 Q. Did you authorize them to act on behalf
14 of Trans Commercial Acceptance?

15 MR. POMERANT: I don't know if he had
16 the authority.

17 MR. BAIRD: He was President of Trans
18 Commercial.

19 MR. POMERANT: I don't know---

20 MR. BAIRD: I am asking if he authorized
21 them to act, not if he had authority.

22 THE DEPONENT: They had been appointed
23 at the beginning as solicitors for the company
24 and were acting for the company.

25

26 BY MR. BAIRD:

27 167 Q. Who appointed them solicitors?

28 A. I presume Mr. Morgan appointed them.

29 168 Q. Did you appoint them as solicitors?

30

1 A. Not as I recall, no.

2 169 Q. I am sorry, I did not---

3 A. Not that I recall. If I had any work

4 to do, I have gone to Solomon & Singer.

5 170 Q. At the same time, there is a transaction

6 involving \$650,000.00 worth of Common shares

7 of Commodore Business Machines. It appears

8 those shares were originally purchased by the

9 German Bank from Five Wheels Limited. That

10 purchase price was \$500,000.00. Are you familiar

11 with this transaction, Mr. Kapp?

12 A. Not too familiar with it.

13 171 Q. Did the German Bank purchase from

14 Five Wheels Limited \$500,000.00 worth of common

15 shares of Commodore Business Machines?

16 A. Well, it is possible. I just told you

17 I am not that familiar. I know there was a

18 purchase and sale from Five Wheels again arranged

19 by Mr. Morgan.

20 172 Q. It appears then that those same shares

21 were purchased from the German Bank by Trans

22 Commercial Acceptance for \$650,000.00. Are you

23 aware of this transaction?

24 A. It is possible it was all arranged at

25 the same time as far as I know.

26 173 Q. Did you negotiate the transaction?

27 A. No.

28 174 Q. Did Mr. Morgan negotiate this trans-

29 action?

30

1 A. As far as I know.

2 175 Q. Were you aware of the fact that the
3 Berlin Bank had purchased 100,000 common shares
4 of Commodore Business Machines from Five Wheels
5 Limited for \$500,000.00 when Trans Commercial
6 purchased those shares from the Berlin Bank?

7 A. I think I stated I did not do this
8 transaction.

9 176 Q. I did not ask you whether you did it.
10 I asked you if you were aware of it?

11 A. I probably had seen the transaction,
12 yes.

13 177 Q. Did you consider the transaction proper,
14 the purchase of the shares from the Berlin Bank
15 by Trans Commercial?

16 A. I did not consider it in one way or the
17 other. I told you, I did not arrange it or
18 participate.

19 178 Q. Why did you sign the documents effecting
20 the transaction?

21 A. As an officer of the company, I carried
22 out the transactions that had taken place.

23 179 Q. On whose instructions did you sign the
24 document?

25 MR. POMERANT: Again, Mr. Baird, I
26 wonder if I can interject here. What is happening
27 is this -- as those questions are asked again
28 and again, Mr. Kapp is slowly reducing the answer
29 he gives not because he doesn't wish to give the
30

1 entire answer but it is obvious he presumes the
2 story is one which everyone is well aware of and
3 as a result, he is putting himself in a position
4 and the answer he has given to the same question
5 time and time again and not appearing to give the
6 entire story as to why he was in the position
7 he was and why he did what he did. Again, I
8 want it absolutely clear on the record that
9 through that question, Mr. Kapp answers with the
10 complete story which he gave in answer to first
11 time this question was raised as to his involve-
12 ment with Morgan, the way he came to be involved
13 in those companies, and Trans Commercial, the
14 reasons why he did what he did have the same
15 application to every question that is put to him.
16 I realize it cannot be deemed to be so but what
17 I am again suggesting in the process of asking
18 the same question time and time again, Mr. Kapp
19 obviously is not giving as full an answer on
20 each occasion because if he did so, he may
21 take up three times as much time.

22 MR. BAIRD: I don't expect Mr. Kapp
23 to, but his answer is that he acted solely on
24 the directions of Mr. Morgan. This is what I
25 understood, that in this transaction he did not
26 use any independent judgment, and that he did it
27 without concerning himself with the merits of
28 the transaction and he just signed at the sole
29 direction of Mr. Morgan. This is what I have

1 understood Mr. Kapp to tell me today. I wanted
2 to know whether this is correct. He signed solely
3 at the request of Mr. Morgan.

4 MR. POMERANT: Either expressly, or
5 impliedly.

6 MR. BAIRD: And he did nothing with his
7 own independent judgment. Is that the situation
8 in this transaction?

9 THE DEPONENT: That is correct.

10
11 BY MR. BAIRD:

12 180 Q. Mr. Kapp, on August 4th, 1964, the
13 books of Trans Commercial indicate that it
14 loaned \$11,792.00 to Commodore Business Machines.
15 At the same time \$11,792.00 was borrowed from
16 S.J. Gould. Would you please explain that
17 transaction?

18 A. Mr. Gould had deposited that \$11,792.00
19 with Trans Commercial, and as far as Commodore,
20 it only just happened to be the same money,
21 but nothing to do with Mr. Gould. It is two
22 separate transactions.

23 181 Q. I have also been advised that Baronet
24 Associates Inc. loaned \$11,792.00 to S.J. Gould.
25 Why was this done?

26 A. I don't know. This was something that
27 had been arranged. Mr. Gould borrowed the money
28 from Baronet and deposited the counter part with
29 Trans Commercial this being the guarantee for

1 his loan at Baronet.

2 182 Q. What was the purpose of the transaction?

3 A. I think it was a personal reason of Mr.
4 Gould.

5 183 Q. Did you arrange the transaction?

6 A. No.

7 184 Q. I would like to produce to you what
8 appears to be a receipt dated July 31st, 1964
9 signed by Trans Commercial Acceptance Limited
10 per Manfred Kapp, Secretary-Treasurer. I
11 would enter this as Exhibit 4.

12

13 ---EXHIBIT NO. 4: Receipt dated July 31st signed by
14 Trans Commercial Acceptance Limited
per Manfred Kapp.

15

16 BY MR. BAIRD:

17 185 Q. Did you sign that receipt?

18 A. This appears to be my handwriting.

19 186 Q. If you did not arrange the transaction
20 why did you sign the receipt?

21 A. Because I---

22 MR. POMERANT: Again---

23 MR. BAIRD: Please let the witness
24 answer. He can refer back to my previous
25 comment if he wishes.

26 THE DEPONENT: I was going to say this
27 was the same thing -- money was received and
28 a simple receipt given.

29

30

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1 BY MR. BAIRD:

2 187 Q. You signed this on the simple direction
3 of Mr. Morgan?

4 A. I signed it on the same basis that the
5 transaction was arranged by somebody and I have
6 carried it on under the directions given.

7 188 Q. Who arranged those transactions?

8 A. I don't recall who arranged this
9 transaction.

10 189 Q. Did anyone else besides Mr. Morgan
11 arrange transactions on behalf of Trans Commercial?

12 A. Basically, no, not that I know of.

13 190 Q. What is the nature of the business
14 carried on by Jay Man Distributors Limited?

15 A. Jay Man purchases and sells business
16 machines and presently manufactures dry copy
17 machines, photo copy machines.

18 191 Q. Where does it carry on its business?

19 A. In New York.

20 192 Q. Was there a financial statement
21 prepared as to the assets and liability of Jay
22 Man as of December 31st, 1964?

23 A. Possibly.

24 193 Q. Where is this financial statement at
25 the present time?

26 A. The bankers of Jay Man, I presume.

27 194 Q. You are an officer of Jay Man. Do
28 you have a copy of the financial statement?

29 A. I couldn't tell you.

30

1 MR. POMERANT: Are you an officer
2 presently of Jay Man?

3 THE DEPONENT: Presently, yes.

4

5 BY MR. BAIRD:

6 195 Q. When did you become an officer of Jay
7 Man?

8 A. I don't know, not too long ago. I
9 have to check.

10 196 Q. What do you mean by not too long ago?
11 Did you become an officer of Jay Man in the
12 year 1963?

13 A. I don't think so.

14 197 Q. Did you become an officer of Jay Man
15 in the year 1964?

16 A. It is possible in that I don't know
17 the date.

18 198 Q. Will you undertake to advise me as to
19 the date you became an officer of Jay Man?

20 A. If I undertake to do something, it is
21 only to the best I know how.

22 199 Q. Did you invest any money in Jay Man?

23 A. No.

24 200 Q. Why did you become an officer of Jay
25 Man Distributors Limited?

26 MR. POMERANT: Jay Man, I take it, is
27 dealing with Trans Commercial?

28 MR. BAIRD: Yes. I am coming to that.

29 THE DEPONENT: For the same reason I

30

1 stated before, I became an officer and director
2 of different companies.

3

4 BY MR. BAIRD:

5 201 Q. Was this done at the request of Mr.
6 Morgan?

7 A. It was done principally at the request
8 of Mr. Tramiel.

9 MR. POMERANT: Just to clarify that,
10 on whose instructions?

11 THE DEPONENT: I presume Mr. Tramiel
12 maybe had discussed it with Mr. Morgan.

13

14 BY MR. BAIRD:

15 202 Q. Who owns the majority of shares of
16 Jay Man?

17 A. I believe it is Evermac.

18 203 Q. I have been advised, Mr. Kapp, there
19 were only two shares issued by Jay Man and one
20 is held by Mr. Tramiel, and one is held by you?

21 A. It is possible.

22 204 Q. What was the purpose for running, or
23 controlling, or managing the business of Jay
24 Man?

25 A. Well, as I stated to you before, Jay
26 Man was in the used equipment mainly used
27 equipment business, business machines.

28 205 Q. You purchased all the shares of Jay
29 Man, is that correct -- you and Mr. Tramiel

30

1 purchased the shares of Jay Man?

2 A. No, we didn't say that we purchased.

3 I told you I believe that Evermac owned them.

4 206 Q. Who paid for your share in Jay Man?

5 A. I don't know. I don't know if it

6 was paid.

7 207 Q. Did you pay for it?

8 A. No.

9 208 Q. Did Mr. Tramiel pay for it on your

10 behalf?

11 A. I don't know.

12 209 Q. Who are the auditors of Jay Man?

13 A. I believe it is Mr. Lee Davis Leon

14 probably.

15 210 Q. Where does he carry on business?

16 A. New York.

17 211 Q. Was Jay Man a profitable company?

18 A. No, not particularly profitable.

19 212 Q. Why not?

20 A. I don't know. It just didn't make

21 any money.

22 213 Q. Who controlled the business of Jay

23 Man?

24 A. Well, it was handled in New York.

25 214 Q. Who handled it in New York?

26 A. People, different people working for

27 the company.

28 215 Q. Who made the management decisions on

29 behalf of the company?

30

1 A. Mostly I presume through Mr. Tramiel
2 who lived in New York all the years.

3 216 Q. Did you make any management decisions
4 on behalf of Jay Man?

5 A. Not particularly, no.

6 217 Q. Did you make any management decisions
7 at all?

8 MR. POMERANT: Just to be sure---

9 MR. BAIRD: He said not particularly.

10 I don't think that is a satisfactory answer
11 because it doesn't answer my question.

12 MR. POMERANT: I am not quarrelling
13 with your question. Perhaps you would qualify
14 what management decisions are.

15 MR. BAIRD: I am concerned with the
16 borrowing of money and the large loans or repay-
17 ment of loans by Jay Man.

18 THE DEPONENT: Well, again all those
19 different loans had all been arranged by Mr.
20 Morgan, or authorized by Mr. Morgan.

21
22 BY MR. BAIRD:

23 218 Q. Why was he involved in Jay Man?

24 A. For the same reason he was involved in
25 all the other companies.

26 219 Q. There appears to be no reason why
27 he was involved in Jay Man. You have explained
28 why he was involved in Trans Commercial but
29 not in Jay Man. Jay Man, from what you tell me,

1 only carried on business of repairing huge
2 office machines?

3 A. Well, he was involved as far as I
4 know in all the business as far as Commodore
5 and Jay Man.

6 MR. POMERANT: I think it might be
7 necessary for Mr. Kapp to go back to properly
8 answer that question, to his first dealings with
9 Mr. Morgan as to how Mr. Morgan came to take
10 over the effective control of almost everything
11 he touched.

12 MR. BAIRD: I don't want to go back
13 unnecessarily but I want to know how Mr. Morgan
14 became involved with Jay Man.

15
16 BY MR. BAIRD:

17 220 Q. Who became involved with Jay Man first
18 -- you or Mr. Morgan?

19 A. I believe as far as I can recall,
20 when Jay Man was incorporated Mr. Morgan was
21 already with Commodore.

22 221 Q. Did Mr. Morgan arrange for the
23 incorporation of Jay Man?

24 A. I don't know.

25 222 Q. Did you arrange for the incorporation
26 of Jay Man?

27 A. No.

28 223 Q. Who arranged for the incorporation
29 of Jay Man?

30

1 A. I am not sure.

2 224 Q. Was Jay Man operating before you became
3 associated with it?

4 A. Before I became an officer? Yes.

5 225 Q. Was it operating before Mr. Tramiel
6 became associated with it?

7 A. I don't know.

8 226 Q. How long has Jay Man carried on business?

9 A. I don't know how long, a few years.

10 227 Q. I am advised that the name Jay Man
11 appears to come from the first name of Jack
12 Tramiel, and your first name Manfred Kapp. Is
13 that correct?

14 A. I don't know. It is possible.

15 228 Q. Who decided on the name of the company?

16 A. Not me. I don't know who did.

17 229 Q. Were you involved with the company at
18 the time it was incorporated?

19 A. Not that I know of. If my basis of
20 my name has been used, I couldn't answer you
21 for that.

22 230 Q. Who was involved in the incorporation
23 of the company at the start?

24 A. I believe Mr. Tramiel might have been.

25 231 Q. Do you know whether he was acting on
26 behalf of himself, or acting on the directions
27 of Mr. Morgan?

28 A. Probably on the direction of Mr. Morgan.

29 232 Q. I am not concerned -- I want to know
30

1 whether or not you know whether he was
2 acting on behalf of himself, or on behalf of
3 Mr. Morgan?

4 A. I told you before I was not aware of
5 the circumstances. I cannot answer you.

6 233 Q. Did Jay Man have any dealings with
7 Commodore Dry Copy, or Commodore Business
8 Machines?

9 A. Yes.

10 234 Q. What was the nature of those dealings?

11 A. At times Jay Man has bought equipment
12 from Commodore and also times when it sold
13 certain equipment.

14 235 Q. When you refer to Commodore, which
15 company are you referring to?

16 A. Both companies.

17 236 Q. Commodore Dry Copy and Commodore
18 Business Machines?

19 A. Yes.

20 237 Q. What was the first transaction
21 involving Jay Man and one of the Commodore
22 companies, and which company was it with?

23 A. I think Commodore Business Machines.

24 238 Q. What was the nature of the transaction?

25 A. I can't answer you. It was probably
26 the sale or purchase of some equipment.

27 239 Q. How much money was involved?

28 A. I can't tell you. Are there some
29 books that would give those records?

30

1 240 Q. What was the nature of the transaction
2 involving Jay Man and Commodore Dry Copy?
3 A. I believe Jay Man bought some dry copy
4 equipment from Commodore Dry Copy.
5 241 Q. How much was paid for this dry copy
6 equipment?
7 A. Off hand, I don't know.
8 242 Q. Were you involved in this transaction?
9 Did you arrange it?
10 A. No, I didn't arrange it.
11 243 Q. Do you know who arranged it?
12 A. As far as I know again, it was probably
13 arranged by Mr. Tramiel under the direction or
14 knowledge of Mr. Morgan.
15 244 Q. Did you approve the transaction on
16 behalf of Commodore Dry Copy?
17 A. Not that I know of.
18 245 Q. Are you an officer of Commodore Dry
19 Copy?
20 A. Yes.
21 246 Q. Did you authorize anyone to act on
22 behalf of Commodore Dry Copy in the transaction?
23 A. No.
24 247 Q. Now, the books of account of Trans
25 Commercial indicate that on June 24th, 1964
26 \$137,000.00 was loaned to Jay Man. Throughout
27 this examination, when I am referring to Jay Man,
28 I am referring to Jay Man Distributors Inc. What
29 was the reason for this loan, Mr. Kapp?
30

1 A. Jay Man, as far as I know, borrowed
2 money and paid Commodore Business Machines
3 (Canada) Limited for money due to them.

4 248 Q. Why did Jay Man owe Commodore Business
5 Machines (Canada) Limited any money?

6 A. Jay Man had bought some equipment
7 from Commodore Business Machines.

8 249 Q. How much was the equipment? What was
9 the purchase price of this equipment?

10 A. I presume it must have been around
11 that amount.

12 250 Q. It appears from the books of account
13 of Trans Commercial that Commodore Business
14 Machines subsequently assumed \$40,116.45 of
15 this indebtedness. Why was this done?

16 A. Apparently Commodore Business Machines
17 owed this amount of money to Baronet.

18 251 Q. Why would it agree to pay this
19 amount of money to Jay Man? Why would it agree
20 to pay this amount of money to Trans Commercial?

21 A. Well, it did not -- as I explained
22 Jay Man paid this amount of money to Baronet
23 on behalf of Commodore. Apparently Commodore
24 owed the money to Baronet at that time and so
25 Commodore took over this portion of the obliga-
26 tion from Trans Commercial.

27 252 Q. Mr. Kapp, you appear to be reading
28 from some notes. May I see your notes?

29 A. I don't think so.

1 253 Q. What are the nature of your notes?

2 A. My own personal notes.

3 254 Q. Why did you make those notes, and from
4 what records did you make the notes. That is
5 a proper question.

6 MR. POMERANT: I can answer that. In order
7 to be of assistance at this examination, it
8 is apparent without giving some thought to
9 Trans Commercial Acceptance Limited Mr. Kapp
10 would have to say to a great number of questions,
11 "I can't recall." As a result, he has spent
12 some time in attempting to recollect what
13 occurred in regard to Trans Commercial
14 Acceptance Limited and in addition to that,
15 there were questions that were asked of Mr.
16 Tramiel at the previous examination and there
17 has been some investigation made to attempt
18 to answer some of the questions that Mr. Tramiel
19 was unable to answer and as a result, there were
20 some notes made in order to be able to assist
21 with the examination.

22 MR. BAIRD: Are any of the documents
23 Mr. Kapp is referring to documents belonging
24 to Trans Commercial.

25 MR. POMERANT: No.

26 THE DEPONENT: Those are not documents.

27 MR. POMERANT: I can show you what they
28 are. I don't want to enter them as an Exhibit
29 but at the same time, you can see the answers

1 deal with the questions asked pursuant to your
2 letter so that---

3 THE DEPONENT: They are not documents.

4 MR. BAIRD: I thought they might have
5 been documents belonging to Trans Commercial.
6 That is why I thought I would be entitled to
7 see them.

8 MR. POMERANT: Of course.

9

10 BY MR. BAIRD:

11 255 Q. In April of 1965, the books of account
12 of Trans Commercial show that Jay Man was charged
13 with \$92,012.90 being a debt that was owing
14 originally to Trans Commercial by Commodore
15 Business Machines (Canada) Limited. Would you
16 please tell me the reason for this transaction?

17 A. It would be the same thing. Apparently
18 Jay Man owed some money to Commodore Business
19 Machines and borrowed it from Trans Commercial
20 to repay Commodore. Those entries were apparently
21 made by journal entries.

22 256 Q. I don't understand your explanation,
23 Mr. Kapp. The entries in the books, as I
24 understand them, is that Commodore owed Trans
25 Commercial at least \$92,012.90. The effect of
26 this entry in the books of Trans Commercial was
27 that those moneys were no longer owed by
28 Commodore Business Machines but was owing by
29 Jay Man to Trans Commercial?

1 A. That means it was loaned by Trans
2 Commercial to Jay Man and Jay Man in fact gave
3 it to Commodore.

4 257 Q. Why was this transaction effected?

5 A. Because at that time Jay Man again
6 owed some money to Commodore Business Machines.

7 258 Q. This was a means of Commodore Business
8 Machines being repaid a debt owing to it by
9 Jay Man. Is that correct?

10 MR. POMERANT: Just a moment---

11

12 BY MR. BAIRD:

13 259 Q. Is that correct?

14 MR. BAIRD: I think that is something
15 that Mr. Kapp can answer.

16 MR. POMERANT: I am not sure if it
17 is something that he can answer -- was it a
18 means---

19 MR. BAIRD: A method whereby---

20 MR. POMERANT: That allegation is
21 something I would suggest isn't warranted by
22 the facts as they are disclosed. In other words,
23 was the loan repaid on this basis? The answer is
24 yes. Was this a means, or was this the intent
25 of the entire transaction---

26 MR. BAIRD: Was to repay a loan of
27 Jay Man to Commodore Business Machines.

28

29

30

1 BY MR. BAIRD:

2 260 Q. My question -- was that the purpose
3 of the transaction?

4 A. That was the purpose of the transaction.
5 Jay Man borrowed money from Trans Commercial
6 to pay its indebtedness to Commodore.

7 261 Q. Why did Jay Man do this?

8 A. Commodore is not in the lending business
9 and Jay Man borrowed the money from Trans
10 Commercial and paid it to Commodore.

11 262 Q. Does Jay Man have sufficient assets
12 to repay this indebtedness to Trans Commercial?

13 A. I don't think so off hand.

14 263 Q. When this transaction was effected,
15 did Jay Man have sufficient assets to repay
16 this indebtedness to Trans Commercial Acceptance?

17 A. I couldn't answer you at this moment.

18 I don't know.

19 264 Q. It appears to me---

20 MR. POMERANT: I think there is an
21 answer too, Mr. Baird, just to leave that question
22 the way it is, perhaps it might result in a --
23 surely the question should be -- it is not for
24 me to change the question, but surely the
25 question should be to make it fair, to present
26 a more fair picture, is not only did they have
27 sufficient assets at the time they made the
28 loan, but was there an expectation on the part
29 of Jay Man that they could make the loan. That

30

1 is if companies make loans, they usually don't
2 have enough money at the time they make the loan
3 to carry on with their affairs. I think that is
4 a far different question as to whether they had
5 an honest expectation of being able to repay the
6 loan. I can simplify it by saying -- it is
7 fairly obvious at the time Jay Man made the
8 loan they wouldn't have the money but may have
9 an expectation of repaying the loan.

10 MR. BAIRD: No, I dispute your conclusion.
11 A lot of profitable companies don't borrow money
12 because their assets are tied up in other ways
13 and they need liquid cash so I don't think your
14 conclusion--A lot of profitable companies don't
15 borrow money because their assets are tied up
16 in other ways and they need liquid cash so I
17 don't think your conclusion is correct.

18 MR. POMERANT: It is not necessarily
19 correct but on the other hand, I think to make
20 it perfectly fair, the question should be not
21 whether they had present assets to cover the
22 loan as opposed to whether they had the ability,
23 or intention to repay the loan.

24 MR. BAIRD: I will ask all of those
25 questions.

26
27 BY MR. BAIRD:

28 Q. Did Jay Man have sufficient assets in
29 April 1965 to repay the loan?

30

1 A. I think I answered you. I couldn't
2 tell you at this particular time. I assume so.

3 266 Q. I have been advised that Jay Man has
4 produced a statement showing it had a loss of
5 over \$800,000.00 for the year ended April,
6 1965. Is that correct?

7 A. I believe a statement was produced,
8 yes.

9 267 Q. Who produced this statement?

10 A. I have turned it over to the Clarkson
11 Company at their request.

12 268 Q. So did Jay Man -- was there any
13 possibility of Jay Man being able to repay
14 this loan when the loan was made in April of
15 1965?

16 MR. POMERANT: Undoubtedly---

17

18 BY MR. BAIRD:

19 269 Q. Was there any reasonable possibility--
20 I will qualify it -- was there any reasonable
21 possibility of Jay Man being able to repay the
22 loan when it was made in April 1965?

23 MR. POMERANT: It is obvious the loan
24 wouldn't have been given if the loan was not to
25 be repaid.

26 MR. BAIRD: That is not obvious. I
27 wish your client would answer my question.

28 MR. POMERANT: You are certainly not
29 going to have Mr. Kapp suggest that when the
30

1 loan was made to Jay Man, that there was no
2 intention of repaying the loan. This is not a
3 Quebec Bankruptcy we are dealing with.

4 MR. BAIRD: I won't argue that point
5 with you, Mr. Pomerant.

6

7 BY MR. BAIRD:

8 270 Q. What were the prospects of repaying
9 the loan when it was made in April 1965, the
10 loan of \$92,012.00?

11 A. I couldn't answer you. Those loans
12 had been approved and the people who approved
13 the loan must have been confident in one way
14 or the other the money would be coming back.

15 271 Q. Who approved the loan?

16 A. As I explained to you before, all those
17 different loans have been approved by Mr. Morgan.

18 272 Q. Did you arrange this loan as an officer
19 of Commodore Business Machines?

20 A. No, I did not.

21 273 Q. Were you involved in this transaction
22 on behalf of Commodore Business Machines?

23 A. It is possible that I carried on the
24 same as in the other transactions.

25 274 Q. Did you instigate or suggest this
26 transaction as an officer of Commodore Business
27 Machines?

28 A. It is possible I may have suggested
29 that Jay Man owed money and it would be a good

30

1 idea if a way could be found to pay it back.

2 275 Q. But did you?

3 A. I don't recall.

4 276 Q. Mr. Kapp, in December 1964 \$53,000.00
5 was loaned by Trans Commercial to you and this
6 money was paid directly to Commodore Business
7 Machines. Would you please explain the reason
8 for this transaction?

9 A. Trans Commercial has loaned many,
10 many times money to pick up stock option I
11 had with Commodore Business Machines.

12 277 Q. Who authorized this loan on behalf of
13 Trans Commercial?

14 A. Mr. Morgan would authorize it.

15 278 Q. Did Mr. Morgan also authorize the
16 loan to Mr. Tramiel?

17 A. I assume so.

18 279 Q. Did you have any active part in
19 arranging the loan to either yourself or
20 Mr. Tramiel on behalf of Trans Commercial?

21 A. No. Mr. Tramiel arranged that with
22 Mr. Morgan, both of them.

23 280 Q. Now, did Trans Commercial agree to
24 sell 24,800 shares of Commodore Business Machines
25 to the Berlin Bank?

26 A. Did Trans Commercial agree?

27 281 Q. Yes, to sell 24,800 common shares of
28 Commodore Business Machines to the Berlin Bank?

29 A. I don't know off hand. I know there

30

1 had been requests.

2 282 Q. The books of account indicate on May
3 31st, 1965 there was a transaction whereby
4 Trans Commercial agreed to sell 24,800 shares
5 of Commodore Business Machines to the Berlin
6 Bank for \$254,200.00. The books indicate that
7 two payments were received on account of this
8 transaction -- \$110,000.00 and \$10,000.00
9 leaving a balance owing of approximately
10 \$137,000.00 by the Berlin Bank. Were you involved
11 in this transaction?

12 A. No. I do know that from time to time
13 the Berlin Bank requested shares, asked Trans
14 Commercial to obtain shares for them.

15 283 Q. How did you become aware of those
16 requests?

17 A. As I seen letters from the bank
18 requesting those shares.

19 284 Q. Were 24,800 shares delivered to the
20 Berlin Bank by Trans Commercial?

21 A. I couldn't answer you. The books of
22 the company might reflect.

23 285 Q. Mr. Kapp, you have delivered to the
24 Clarkson Company 43,020 shares of Commodore
25 Business Machines registered in the name of
26 Hugo Oppenheimbank (Canada). Is that correct?

27 A. I delivered the shares to them but I
28 don't recall the amount.

29 MR. POMERANT: Do you recall in whose

30

1 names the shares were?

2 THE DEPONENT: No. Some of those
3 things I just don't remember. I remember I
4 turned over to the Clarkson Company. There is
5 a list in existence exactly because we obtained
6 a receipt from the Clarkson Company and I
7 would assume they must have a copy. I do have
8 a copy but not with me.

9
10 BY MR. BAIRD:

11 286 Q. Who were the actual owners of those
12 shares? They were registered in the name of
13 the Hugo Oppenhambank (Canada) but they were
14 endorsed. Who actually owned those shares?

15 MR. POMERANT: Again, I don't want
16 to keep him from answering. Wasn't there a long
17 discussion on who owned the shares?

18 THE DEPONENT: On the last occasion
19 we determined they belonged to the Hugo Oppenheim-
20 bank according to Mr. Gardner and the books of
21 the company.

22 MR. POMERANT: Mr. Baird, to refresh
23 your memory as I recall it with regard to those
24 shares that are in discussion now, it was
25 decided -- I have forgotten exactly who owned
26 them, but it was owned by somebody that Clarkson
27 Company was obviously satisfied with. Anyways,
28 after some long discussion, we finally decided.

29 MR. BAIRD: I will move on then.
30

1 BY MR. BAIRD:

2 287 Q. Were 24,800 shares of Commodore Business
3 Machines delivered to the German Bank?

4 A. I can't answer you. There have been
5 shares bought by the German Bank and there have
6 been shares delivered and transferred to the
7 German Bank. What specific, or particular
8 share, I am not in a position to answer.

9 288 Q. If there were two payments received
10 in the Berlin Bank -- I have referred to them --
11 \$110,000.00 and \$10,000.00, why were those
12 payments received from the German Bank?

13 A. Again, this is one of the items I
14 got into on the previous question all I can
15 tell is they were taken for shares.

16 289 Q. They appear to be payment for the
17 shares, the 24,800 shares that I have referred
18 to, but the Berlin Bank deny ever receiving
19 those shares?

20 A. I believe last time you said yourself
21 you had these shares?

22 290 Q. We have 43,020 shares, yes, but are
23 those the same shares? That is the question
24 I am asking you, Mr. Kapp?

25 A. I don't know. I am not in a position---

26 291 Q. Did you arrange for 24,800 shares of
27 the Commodore Business Machines to be delivered
28 to the Berlin Bank?

29 A. No.

30

1 ---Off the record discussion.

2

3 BY MR. BAIRD:

4 292 Q. Mr. Kapp, did you arrange, or do you
5 know who arranged the sale of 24,800 shares of
6 Commodore Business Machines to the Berlin Bank?

7 A. No, I did not arrange the sale and
8 as I explained to you before, they were mostly
9 requests from the bank themselves.

10 293 Q. Mr. Kapp, I would like to show you an
11 entry in the General Journal at page GJ 19 as
12 of May 31st, 1965 regarding this transaction.
13 Can you advise me as to whether you made this
14 entry?

15 A. No, I did not make it.

16 294 Q. Can you advise me who made the entries
17 in the book?

18 A. It appears that Mr. Draper would make
19 the entry.

20 295 Q. Did you give Mr. Draper instructions
21 to make the entry?

22 A. Not that I recall I did, not to give
23 the direction but I must assume when it involved
24 Hugo Oppenheim Und Sohn, this would have been
25 the request from them to forward them at their
26 request.

27 296 Q. Have you any documents from them
28 requesting purchase of 24,800 shares of Commodore
29 Business Machines?

30

1 A. I don't know. I still have a file
2 with some letters from the bank and I can look
3 through it.

4 297 Q. Are those letters to Trans Commercial
5 from the Berlin Bank?

6 A. Some addressed to me, some to Mr.
7 Tramiel, some to Commodore, just a general
8 file of letters received.

9 MR. POMERANT: I think he has attempted
10 to produce all the documents related to Trans
11 Commercial.

12 MR. BAIRD: That is why I am concerned,
13 whether he has any other correspondence involving
14 the affairs of Trans Commercial.

15 MR. POMERANT: I think he has honestly
16 attempted to bring all the documents he has and
17 to give them to the Clarkson Company and yourself.

18
19 BY MR. BAIRD:

20 298 Q. Will you undertake to see if there
21 are any further correspondence involving Trans
22 Commercial and the Berlin Bank?

23 A. Yes, I will be happy to look through
24 the file and see if there is a letter.

25 299 Q. It appears in the records of Trans
26 Commercial that it made considerable loans to
27 Racan Photo Copy Corporation Limited and then
28 this business ceased in September of 1964.
29 Can you advise me as to when the business

30

1 || ceased?

2 A. Yes, business was started again at the
3 request of Mr. Morgan but this was only dealing
4 -- I personally requested Mr. Morgan I didn't
5 want anything to do with Racan and on insisting,
6 the loan was taken over by Commodore Sales.

7 300 Q. Why didn't you want anything to do
8 with Racan?

9 A. I had been involved in Racan through
10 Commodore Business Machines and I really walked
11 out through the management with Commodore. It
12 was through Racan and I was not particularly
13 interested to have any dealing with that company.

14 301 Q. Mr. Kapp, I would like to produce to
15 you a photostatic copy of a financial statement
16 of Trans Commercial as of December 31st, 1964.
17 I would like to enter this as Exhibit 5.

19 ---EXHIBIT NO. 5: Financial Statement of Trans Commercial
as of December 31st, 1964.

21 BY MR. BAPTIST.

22 302 Q. Did you approve of this financial
23 statement on behalf of the Board of Directors
24 of Trans Commercial?

25 MR. POMERANT: Did he approve the
26 statement as a member of the Board of Directors
27 of Trans Commercial?

28 MR. BAILY: That is my question.

1 MR. POMERANT: Yes, I appreciate it,
2 Mr. Baird. Again, I don't want to give the
3 appearance of (a) being obstructionist, or
4 (b) hindering this examination but again I
5 think it has been exceptionally -- I don't
6 want to use the word unfair because I think we
7 all know what the answer is going to be but
8 this is an exceptionally difficult question to
9 answer in light of his capacity and interest in
10 it.

11 MR. BAIRD: I still expect an answer,
12 Mr. Pomerant.

13 THE DEPONENT: A statement was prepared
14 by Wagman, Fruitman and Lando. When it came
15 to me, it was already approved.
16

17 BY MR. BAIRD:

18 303 Q. Who was it approved by?

19 A. Apparently approved by Mr. Morgan and
20 again the signatures which appear and they were
21 only carried on in the same light as outlined
22 before.

23 MR. POMERANT: I wonder if I can
24 ask one question that might clarify this.
25 To the best of your knowledge, who was the
26 accountant for Mr. Morgan, or were the accountants
27 for Mr. Morgan.

28 THE DEPONENT: The accountants for
29 Mr. Morgan to the best of my knowledge were
30

1 Wagman, Fruitman, and Lando.

2

3 BY MR. BAIRD:

4 304 Q. They were also the accountants for
5 Trans Commercial. Is that correct?

6 A. That is correct.

7 MR. POMERANT: In other words, they
8 were the accountants for Mr. Morgan and/or
9 Morgan companies.

10

11 BY MR. BAIRD:

12 305 Q. Did you in fact sign this statement
13 on behalf of the Board of Directors of Trans
14 Commercial?

15 A. It appears to be my signature.

16

17 ---Off the record discussion.

18

19 BY MR. BAIRD:

20 306 Q. Included in the assets of Trans
21 Commercial are notes receivable totalling
22 \$452,246.28 and the records of the company
23 indicate that those notes receivable were
24 made up of the following items: -- interest
25 owing of \$4,837.93; loan to Evermac Office
26 Equipment Company Limited of \$222,900.00;
27 a loan to Jack Tramiel of \$67,116.33; a
28 loan to M. Kapp of \$53,000.00; and a loan
29 to Jay Man Distributors Inc. of \$104,392.02,
30

1 totalling in all \$452,246.28. Would you confirm
2 whether this is correct, Mr. Kapp.

3 MR. POMERANT: He said he can't
4 determine.

5 MR. BAIRD: I am prepared to allow you
6 to examine the accounts of the company.

7 MR. POMERANT: Are those figures
8 taken from the accounts of the company?

9 MR. BAIRD: Yes.

10 MR. POMERANT: Is there any reason
11 to suspect they are incorrect?

12 MR. BAIRD: I would like Mr. Kapp
13 to examine the books and tell me whether they
14 are correct or incorrect. We will produce the
15 exact pages of the Trans Commercial ledger
16 showing the accounts. I would like to deal
17 with each one as you come to it. The first
18 one is interest as of December 31st 1964 in
19 the amount of \$4,837.93?

20 THE DEPONENT: It is in accordance
21 as it appears in the books.

22
23 BY MR. BAIRD:

24 307 Q. Next, is loan to Evermac Office
25 Equipment Company Limited. The books show
26 as of December 31st, 1964 amount owing of
27 \$222,900.00. Is that in accord with the books?

28 A. Yes, that appears to be correct. It
29 appears to be in accordance with the books.

30

1 308 Q. Next is loan to J. Tramiel as of
2 December 31st, 1964 of \$67,116.33. Is that
3 in accordance with the books, Mr. Kapp?
4 A. Yes, it is.
5 309 Q. Next is loan of M. Kapp as of December
6 31st, 1964 of \$53,000.00. Is that correct?
7 A. Yes, it is.
8 310 Q. Next is Jay Man as of 31st December
9 1964 of \$104,392.02?
10 A. Yes, it appears in accord with the book
11 and the total of those, I must assume that your
12 total is correct.
13 311 Q. Mr. Kapp, the financial statement
14 shows in the statement of retained earnings
15 for the year ended December 31st, 1964 that
16 there were dividends paid of \$24,877.50, and
17 \$28,597.50. Were dividends of those amounts
18 paid by Trans Commercial?
19 A. I have to assume if it is said so in
20 the statements, it would be correct.
21 312 Q. To whom were the dividends paid?
22 A. I think -- I am not sure but I think
23 it was paid to Associated Canadian Holdings
24 but the record of Trans Commercial should be
25 able to give you that.
26 313 Q. The records indicate that there is
27 a total of \$53,475.00 by way of dividends paid
28 to Associated Canadian Holdings. Would that
29 be correct?
30

1 A. That would be correct.

2 314 Q. Did you, as shareholder of Trans
3 Commercial receive any dividends?

4 A. I was not a shareholder of Trans
5 Commercial.

6 315 Q. According to the books of the company
7 you hold one qualifying share of Trans Commercial.
8 Did you receive a dividend on that share?

9 A. I did not.

10 MR. POMERANT: Just to keep the record
11 and to follow the continuity, who was in effec-
12 tive control of Associated Canadian Holdings,
13 Mr. Kapp.

14 THE DEPONENT: Effective control of
15 Associated Canadian Holdings was in the hands
16 of Mr. Morgan.

17 MR. POMERANT: Would it be correct
18 that dividends from the Morgan companies would
19 be given from Morgan companies to Morgan
20 companies?

21 THE DEPONENT: Yes.

22
23 BY MR. BAIRD:

24 316 Q. Who arranged for the payment of
25 dividends?

26 A. Mr. Morgan would have arranged for
27 the payment on the availability of the
28 money.

29 317 Q. Mr. Kapp, I would like to present to
30

1 you minutes of meeting of the directors of
2 Trans Commercial Acceptance Limited held on
3 December 23rd, 1964. It appears there were
4 present Manfred Kapp, Frederick Draper, and
5 Carl O. Solomon. I would like to enter this
6 as Exhibit 6.

7

8 ----EXHIBIT NO. 6: Minutes of meeting of directors of
9 Trans Commercial held December 23rd
10 1964.

11 BY MR. BAIRD:

12 318 Q. Were you present at a meeting of
13 directors of Trans Commercial Acceptance Limited
14 on that date?

15 A. I must assume if there was a meeting
16 I would state I was there. I must have been
17 there.

18 319 Q. Did you sign the minutes?

19 A. This appears to be my signature.

20 320 Q. At this meeting was the payment of the
21 dividends authorized?

22 MR. POMERANT: Again, it is a very
23 difficult question for Mr. Kapp to answer,
24 Mr. Baird, because his position as he related
25 it, is that the authorization which gave rise
26 to the dividend was made by Mr. Morgan.

27 MR. BAIRD: It is evident he as director,
28 authorized the payment of the dividend. Is
29 that correct. I don't want to argue with you,

30

1 Mr. Pomerant. I apologize if I have interrupted
2 you.

3 MR. POMERANT: I also apologize if I
4 have interrupted you, Mr. Baird. We are getting
5 back to the same answer again.

6 THE DEPONENT: This has been signed
7 and authorized in the same light as I have
8 described to you before, strictly as something
9 that has been done by somebody else, authorized,
10 and only carried through.

11

12 BY MR. BAIRD:

13 321 Q. Did you authorize payment of the
14 dividends at the request of Mr. Morgan?

15 A. Yes.

16 322 Q. Were Messrs. Solomon & Singer who
17 were also present at this meeting, were they
18 actually present at that meeting?

19 A. I don't specifically recall this
20 meeting.

21 MR. POMERANT: What makes it difficult
22 of course, Mr. Baird, is that minutes of meetings
23 may be prepared after the meeting, and the fact
24 you have produced the signature is not of any
25 great significance in recalling a specific
26 meeting or whether he was at that particular
27 meeting.

28

29

30

1 BY MR. BAIRD:

2 323 Q. The books of Trans Commercial indicate
3 that 4,765 preferred shares of Commodore Business
4 Machines were sold in March and May 1965 to the
5 Berlin Bank and Trans Commercial made a profit
6 of approximately \$12,000.00 on those transactions.
7 Can you explain why those transactions took place?

8 A. Those were now shares of----

9 324 Q. Commodore Business Machines?

10 A. Commodore Business Machines sold to
11 the Bank?

12 325 Q. Yes?

13 A. I think I have stated to you before the
14 bank from time to time has requested Trans
15 Commercial to obtain shares for them and it
16 was done so.

17 326 Q. On May 31st, the books of account of
18 Trans Commercial indicate that Trans Commercial
19 sold to the Hugo Oppenheimbank (Canada) Limited
20 \$141,995.00 of notes of Commodore Business
21 Machines. Did this transaction take place?

22 A. I don't know for sure if it took
23 place or not.

24 327 Q. Where are those notes of Commodore
25 Business Machines worth \$141,995.00?

26 A. To the best of my ability which I
27 tried to trace, British Mortgage or Victoria and
28 Grey presently holds \$950,000.00 of those notes.
29 I believe that the bank have earlier bought and

30

1 taken delivery of \$50,000.00 worth.

2 328 Q. That is the Berlin Bank you are talking
3 about?

4 A. The Berlin Bank have taken -- purchased
5 and taken delivery of \$50,000.00 worth and
6 this would account that they are in the hands
7 of the British Mortgage.

8 329 Q. Why would the books of account of
9 Trans Commercial show \$141,995.00 worth of
10 notes being sold to Hugo Openheimbank (Canada)
11 Limited?

12 A. They were sold but possibly not
13 delivered.

14 330 Q. But is that what happened? Were they
15 sold and not delivered?

16 A. I must assume they were not delivered
17 if they are in the hands of British Mortgage.

18 331 Q. Who arranged this transaction?

19 A. I don't know.

20 332 Q. Did you arrange it?

21 A. No.

22 333 Q. Did you authorize the entry to be
23 made in the books of Trans Commercial?

24 A. I might have authorized Mr. Draper to
25 make the entry because I had been given
26 authorization or direction to do it.

27 334 Q. Who would give you that direction or
28 authorization?

29 A. It would be Mr. Morgan or Mr. Tramiel

30

1 that might have got it from Mr. Morgan.

2 335 Q. Can you tell me in fact who you got
3 the authorization and direction from?

4 A. I can't recall at this moment.

5 MR. BARID: We will adjourn it sine
6 die and I will provide you with a list of
7 information I want.

8
9
10
11 I hereby certify the foregoing to
12 be the examination of MANFRED KAPP, under Section 121
13 of the Bankruptcy Act, taken in shorthand before me on
14 the 21st day of October, 1965.

15 Certified correct:

16
17 *Jean Pert*
18 Chartered Shorthand Reporter

Peter W. McHugh

SPECIAL EXAMINER

ROYAL COMMISSION

ON
ATLANTIC ACCEPTANCE CORPORATION LIMITED

EXHIBIT No.

PER.....

REGISTRAR

DATE

Preservation of this documentation was funded in February 2022 by:
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